

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
HENKIN, ET AL., : 21-cv-05716-AMD-VMS  
:   
Plaintiff, :   
:   
- versus - : U.S. Courthouse  
: Brooklyn, New York  
QATAR CHARITY, ET AL., :   
: August 8, 2023  
Defendants : 11:18 a.m.  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE  
BEFORE THE HONORABLE VERA M. SCANLON  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

**For the Plaintiff:** **Patrick L. Rocco, Esq.**  
Fleischman Bonner & Rocco LLP  
81 Main Street, Suite 515  
White Plains, NY 10601

**For Qatar Charity:** **John M. Hillebrecht, Esq.**  
**Patrick Dwyer, Esq.**  
DLA Piper LLP US  
1251 Avenue Of The Americas  
New York, NY 10020

**For Masraf al Rayan:** **Carolina A. Fornos, Esq.**  
**Max Winograd, Esq.**  
Pillsbury Winthrop Shaw Pittman  
31 West 52nd Street  
New York, NY 10019

**Transcription Service:** **Transcriptions Plus II, Inc.**  
61 Beatrice Avenue  
West Islip, New York 11795  
RL.Transcriptions2@gmail.com

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Proceedings

1 THE COURT: So this case is *Henkin v. Qatar*  
2 *Charity*. It's 21-cv-5716.

3 Let's start with counsel's appearances. So for  
4 the plaintiff?

5 MR. ROCCO: Good morning, your Honor. Pat  
6 Rocco; Fleischman Bonner & Rocco, for plaintiffs.

7 THE COURT: Okay. Any order you like.

8 MR. HILLEBRECHT: Thank you, your Honor. Your  
9 Honor, for Qatar Charity, John Hillebrecht; DLA Piper,  
10 LLP and with my associate Patrick Dwyer also from DLA.

11 THE COURT: Okay.

12 MS. FORNOS: Good morning, your Honor.  
13 Carolina Fornos and Max Winograd of Pillsbury Winthrop on  
14 behalf of Masraf al Rayan.

15 THE COURT: Okay. So we're having this  
16 conference just to check in, talk about your discovery  
17 issues. And even though I know it's quixotic, I always  
18 ask if you think there's any possibility of having  
19 settlement discussions, but I'll leave that till the end.

20 All right. So is there any reason we should  
21 deal with this in a particular order other than how you  
22 presented it? Just start with that question, plaintiffs.  
23 You can all stay seated.

24 MR. ROCCO: I don't think, you know, the -- it  
25 boils down to, your Honor, we're seeking to serve a non-

## Proceedings

1 party subpoena on MAR's correspondent bank HSBC. So if  
2 you want me to tell you about that, I'm happy to do that.

3 THE COURT: Okay. I mean I guess I would like  
4 to know your responses to the defendant's position being  
5 substantive but a big part of it being sort of case  
6 specific procedure. Seems like Judge Donnelly was  
7 contemplating a time-limited process and anything that  
8 mentions the word Hague directly or indirectly or akin to  
9 that is never going to take a short amount of time. So  
10 your convention request seems like it would be quite  
11 challenging to get an answer unless you have information  
12 that would be different. And then, you know, working  
13 your way down from that it all seems pretty time  
14 consuming at least on the face of it.

15 MR. ROCCO: Well, your Honor, I would draw a  
16 distinction between the Hague Convention request, which I  
17 can't tell your Honor would take a matter of days or  
18 months. I agree with you that that's a lengthy process.  
19 But simply naming the bank right here in New York is  
20 going to take no longer than the defendants the way this  
21 case with their motion practice -- I mean we lost about  
22 60 days on the allotted time because they asserted a  
23 bunch of objections. They ended up withdrawing and then  
24 telling us they had no relevant documents. So it won't  
25 take I don't think more than 60 days to get a full

## Proceedings

1 response from HSBC.

2 And the reason why we're seeking that, Judge,  
3 and now they're telling us that this is a fishing  
4 expedition, but we have the 2017 guilty plea of a Qatar  
5 Charity accountant in the Palestinian territories that  
6 confessed to an indictment for which there was evidence  
7 in Israel that said that these funds went through New  
8 York. And so they've told us that's not the case.

9 And after much jousting, if you recall, they  
10 ultimately disclosed that HSBC Bank was their  
11 correspondent account and they told us in their document  
12 request not only that they don't have any transactions  
13 that pass money from Qatar Charity in Doha through New  
14 York and the Palestinian territories, but they said they  
15 no longer have the HSBC account opening records which  
16 were from 2010.

17 So that begged the question, your Honor, and I  
18 posed this question point blank to defense counsel. I  
19 said well you're telling us you don't have any  
20 transactions but do you still have the HSBC account  
21 statements? And I didn't get an answer to that question  
22 in our meet and confer, your Honor. Instead, I got an  
23 email back from an associate at the Pillsbury firm that  
24 said counsel for MAR had traveled to Doha and reviewed  
25 all transactions relating to QC for the relevant time

## Proceedings

1 period that involved New York correspondent banking and  
2 counsel reviewed all transactions relating to QC that  
3 involved the HSBC account.

4 And so it's one thing to say that there's no  
5 transactions but if there aren't complete records, your  
6 Honor, then it's possible that that conclusion could be  
7 erroneous. So we're seeking permission primarily to  
8 subpoena HSBC directly to see whether their records  
9 confirm what Mr. Manasra said in his confession and what  
10 the indictment said based on the evidence that the  
11 Israeli prosecutors had gathered.

12 And then later defendant's failure to retain  
13 some records, which we know they didn't, you know, the  
14 account opening documents, it's not unreasonable to  
15 conclude that they may have discarded, lost, or failed to  
16 locate records of the small number of transfers that it  
17 would take to satisfy personal jurisdiction under the  
18 *Leachy* (phonetic) case, which we cited to your Honor.

19 So you know, our position is first of all, they  
20 can enlighten the Court if they have these HSBC account  
21 statements. They have not told us that, but if they have  
22 it that's one thing. But if they don't, then we ought to  
23 get it from the horse's mouth.

24 And I know that their claim, your Honor, is  
25 that Judge Donnelly said nothing about non-party

## Proceedings

1 discovery but she did limit us to just documentary  
2 discovery. And all we would seek from HSBC are  
3 documents. And because we're not able to take a  
4 deposition or a 30(b)(6) or anything, we have no idea how  
5 they came up with the transactions they claim to have  
6 reviewed. We don't know what documents they reviewed to  
7 come to that conclusion.

8 And begging your Honor's pardon, but there's  
9 been a history here in this case where first they told  
10 us, you know, they went down the road and suggested they  
11 had a BONY account because we had alleged that and they  
12 were telling us they didn't. We served a subpoena. We  
13 had a bunch of motion practice. Then they contradicted  
14 all of our definitions in our discovery request to  
15 suggest they were going to give us something narrower.  
16 They litigated those issues.

17 And then on Friday night, last Friday, they  
18 withdrew all their objections and said even using your  
19 definitions, we don't have any transactions or documents  
20 about New York correspondent banking.

21 So you know, and even the guilty plea, your  
22 Honor, in their letter to your Honor, they point to the  
23 fact that in 2015 Mr. Manasra, the QC employee, had given  
24 contrary accounts to the police interrogators. And that  
25 was like two years before his plea. And it's

## Proceedings

1 significant, your Honor, that QC raised that in their  
2 reply papers on the motion to dismiss before Judge  
3 Donnelly in order to accuse us of misleading the Court in  
4 the complaint. They had access obviously to his defense  
5 counsel's files, so they knew he had pled guilty and  
6 retracted that statement, yet they did not submit that  
7 statement to the Court. They only submitted the police  
8 interrogation statement from two years prior where he  
9 made a statement suggesting that the money didn't go  
10 through New York.

11           And I'm not the only former federal prosecutor  
12 in this room today, Judge, but it's not at all unusual  
13 for a criminal defendant in his first interview with  
14 police to tell a story that he later retracts and pleads  
15 guilty to when he's faced with the evidence gathered by  
16 the prosecutor. And here we have -- it's not just his  
17 statement. We have an indictment by the Israeli  
18 prosecutors. The indictment says the money went from  
19 Doha through New York to the Palestinian territories.  
20 And presumably they had documentation to support that.  
21 And Mr. Manasra ultimately pled to that under oath and  
22 confessed. So that trumps his prior inconsistent  
23 statements in police interrogations.

24           So I think the nature in which that was  
25 presented originally just makes us all the more

## Proceedings

1 suspicious about what the defendants are doing and what  
2 they've looked at. And all we're asking for, you know,  
3 with the ability to subpoena HSBC is a confirmation like  
4 that those records still exist at HSBC. It's not a  
5 burden on them. They can press a few buttons, do a  
6 search, and see if there's any Qatar Charity transactions  
7 that passed through that account in the Palestinian  
8 territories and it would dispel any of the suspicions or  
9 the like that we have and because we don't have the  
10 ability to take a deposition is our only way to confirm  
11 that things are as they appear to be and whether Mr.  
12 Manasra was just wrong and the Israeli prosecutors were  
13 just wrong despite their access to bank records and the  
14 like. But I think that's the basis on which we claim to  
15 do this.

16 THE COURT: I'm looking at page 5 of the letter  
17 on the docket at 113, MAR further underscores that Mr.  
18 Manasra stated only that funds were transferred to a bank  
19 in Germany, not New York.

20 MR. ROCCO: That was his initial --

21 THE COURT: That was the initial statement that  
22 you're saying is --

23 MR. ROCCO: His initial statement to  
24 interrogators, your Honor. First of all, not under oath.  
25 It was an interrogation with police. And that's the one



## Proceedings

1 that he retracted by virtue of his confession two years  
2 later in 2017.

3 THE COURT: So the confession addressed that  
4 issue?

5 MR. ROCCO: Yes.

6 THE COURT: Okay.

7 MR. ROCCO: The confession, your Honor, which  
8 is the Exhibit 1 to the letter, it addresses it at -- the  
9 exhibit has the Hebrew version first and then the  
10 translation in the back, your Honor. It's at page 11 of  
11 Exhibit A. It has the actual -- paragraph 5 has the  
12 statement that the funds were transferred from the Main  
13 Jam'iya, which is QC, to the Al-Rayan Bank in Doha. From  
14 there, funds in euros were transferred to Deutsche Bank  
15 in Germany and funds in dollars were transferred to a  
16 bank in New York. Afterwards, all the funds were  
17 transferred to the Bank of Palestine. And it goes on.

18 And then the next page of that -- I'm sorry,  
19 not the next page. Page 14 of that same exhibit, your  
20 Honor, is the defendant's actual plea to those charges  
21 where he says that he's read the entire indictment that's  
22 attributed to him and the amended indictment and he  
23 understands and confesses to it.

24 So you know, we have an indictment where the  
25 prosecutors no doubt have documentation and evidence to

## Proceedings

1 make this claim. They make the claim that a person with  
2 personal knowledge, the QC, Qatar Charity employee  
3 acknowledges it, confesses to it as it happened.

4 So this is not a fishing expedition as they say  
5 in their papers because they apparently no longer have  
6 these HSBC account statements and we have an indictment  
7 that says the money went to New York. So we just want to  
8 confirm with HSBC whether that's the case.

9 And in terms of their undue delay, your Honor,  
10 I said, you know, this is not -- yes, there's an argument  
11 for the Hague Convention. That may take some time. But  
12 for the actual subpoena to HSBC, it shouldn't take any  
13 longer than the delay caused by their motion practice.  
14 And likewise, the fact that they claim some privacy or  
15 personal privilege or right, in the protective order  
16 here, your Honor, they haven't banked with HSBC by their  
17 own admission in seven years. So this is not sensitive  
18 data anymore. There's a protective order that will  
19 protect it. And if they're right and there aren't these  
20 transactions, there aren't going to be any documents from  
21 HSBC so that will moot that point as well, your Honor.

22 THE COURT: All right. Okay. Which of the  
23 defendants would like to go first?

24 MS. FORNOS: Your Honor, if I may on behalf of  
25 Masraf al Rayan?

## Proceedings

1 THE COURT: Yes.

2 MS. FORNOS: Well, the first thing I want to  
3 underscore is we have complied with discovery. We have  
4 produced the documents. We have responded to  
5 interrogatories. We've verified those interrogatories.  
6 The reason that we're here is because the plaintiffs want  
7 to do an end run on the district court's order. That  
8 specifically considered the confession and specifically  
9 limited jurisdictional discovery of a foreign entity  
10 without presence in the United States to document  
11 requests and interrogatories.

12 Your Honor, we have responded to those and we  
13 want the record to be clear we traveled to Doha, we've  
14 met with bank representatives, we looked at all of the  
15 transaction records. And this is important because when  
16 we were last before the Court, we had not had the  
17 opportunity to travel, to make sure that we understood  
18 the records, we understood the transaction, and we have  
19 reviewed those. Those transaction records, there are  
20 none that are responsive to this case. Mr. Rocco --

21 THE COURT: I'm confused. Do you have records  
22 and you reviewed them and you're saying nothing is  
23 responsive? Or you don't have all of the records  
24 relating to the key account?

25 MS. FORNOS: Your Honor, we have all

## Proceedings

1 transaction records and we have reviewed them and there  
2 are no responsive documents. The distinction, and this  
3 is important because that's all that is at issue, we do  
4 not have account opening documents --

5 THE COURT: Right.

6 MS. FORNOS: -- with HSBC. That's the only  
7 thing we don't have. Those would have come from a  
8 different side of the bank. They would have come from a  
9 relationship manager opening an HSBC account. Those are  
10 different than actual records of transactions.

11 THE COURT: And from your perspective, why are  
12 they not relevant?

13 MS. FORNOS: Your Honor, we're not saying that  
14 the opening documents are not relevant. They asked for  
15 them. But candidly, your Honor, they are not relevant.  
16 The fact that an account was opened had nothing to do  
17 with the jurisdiction. We had disclosed a specific  
18 account that was open, it exists. It has been closed.  
19 But what plaintiffs are complaining is they're trying to  
20 use the 13-year-old opening account documents with the  
21 correspondent bank as a means to expand the district  
22 court's restriction limiting jurisdictional discovery to  
23 document demands and interrogatories.

24 THE COURT: Okay. You've got to --

25 MS. FORNOS: And that's what we oppose.

Proceedings

1           THE COURT: I think put aside the limitation  
2 because that can be revisited. The question really is  
3 where are the documents that the plaintiffs are entitled  
4 to review, know about, et cetera. And so you're saying  
5 you have reviewed all of the transactional statements?  
6 That's how I'm understanding this or not?

7           MS. FORNOS: Your Honor, the traditional  
8 statements -- no, it's a system. It's a transactional  
9 system.

10          THE COURT: Okay.

11          MS. FORNOS: We need not go back to every  
12 single statement when the transactional system has a  
13 record of all the transactions. And that's what we have  
14 reviewed and that's what we went and determined that  
15 there were no responsive documents. The reasonable --

16          THE COURT: So I'm trying to walk the line  
17 between asking you about your attorney-client work  
18 product and your process and understanding what it is  
19 that you did such that we shouldn't have plaintiffs go to  
20 the bank itself and get the documents since you may or  
21 may not have them all.

22                So what is it that your client, exactly what is  
23 it your client has that you were able to review?

24          MS. FORNOS: Understood, your Honor. We  
25 reviewed all transaction records to specifically

## Proceedings

1 determine whether there were any transactions that went  
2 to the Palestinian territories passing through a New York  
3 correspondent bank during the relevant time period  
4 regarding the requests that were specifically made by  
5 plaintiffs in any currency. There were none. And we  
6 have no responsive documents. We are confident that we  
7 have reviewed the records to ensure that we can  
8 appropriately respond to their requests.

9           What the defendants -- I mean excuse me, what  
10 the plaintiffs are focusing in on and the distinction  
11 that they're drawing is you didn't physically go and  
12 review every single paper. Well, your Honor, discovery  
13 requires a reasonable diligence, a reasonable search. We  
14 did. We reviewed the actual system records that would  
15 have maintained every transaction in their database and  
16 that's what we have done and we are confident that there  
17 are no responsive documents that exist.

18           THE COURT: Can you tell me more about this  
19 database? What is it? It was the statements are  
20 uploaded, there were like electronic communications of  
21 the statements and that's what's being maintained? They  
22 converted it to something more sophisticated than an  
23 Excel spreadsheet but essentially that? I mean what is  
24 it that you're looking at? How do we know that the  
25 information that you have is the same as what will be

## Proceedings

1 coming from the bank and that this is a repetitive  
2 exercise that shouldn't be allowed and that you have  
3 thoroughly examined what's available?

4 MS. FORNOS: Understood, your Honor. Your  
5 Honor, the bank has its records. It maintains every  
6 transaction. There is no reason to believe that their  
7 records are deficient. And it is a system. I apologize,  
8 I don't have the exact name and can certainly get it if  
9 necessary, but it's a banking system which all banks  
10 have. They're able to look into their database and query  
11 and determine whether or not there are transactions. And  
12 that's what we have reviewed. We have, in addition to  
13 not just reviewing that, we met with bank  
14 representatives. And this is important, your Honor. We  
15 traveled to Doha to make sure that we understood whether  
16 or not there were responsive documents, and there are no  
17 responsive documents to what they're seeking.

18 THE COURT: Okay. So you did this with search  
19 terms? I mean that's the other piece of this. When you  
20 say this kind of transaction didn't happen, what are you  
21 looking for? The PLO? You know, that's not exactly what  
22 they're going to put in the bank records. So what are  
23 you doing in terms of the search?

24 MS. FORNOS: Sure, your Honor. And we're  
25 looking for all of Qatar Charity transactions. That is

Proceedings

1 the easiest way to ensure that you have the universe. So  
2 we looked at all of those transactions.

3 THE COURT: And your conclusion is what?

4 MS. FORNOS: There are no responsive documents  
5 to plaintiff's demands other than the account opening  
6 documents --

7 THE COURT: All right.

8 MS. FORNOS: -- just to be clear, that we've  
9 already produced with respect to the accounts. We  
10 identified our accounts that we had knowledge of. We  
11 identified the account opening documents. Those were  
12 produced to plaintiff's attorney.

13 THE COURT: And what's the scope of the  
14 records? I mean just to get a sense of -- well, the  
15 scope of what the record keeping is like? Are there tens  
16 of thousands of transactions? Is it an account with  
17 limited activity? Accounts with limited activity? What  
18 are you looking at?

19 MS. FORNOS: Your Honor, we are looking at  
20 Qatar Charity transactions that are responsive to the  
21 requests that have been made. I think going anything  
22 further is getting into attorney-client privilege  
23 information.

24 And what we have done is we have reviewed their  
25 requests, we have reviewed their transactions, we have



## Proceedings

1 reviewed Qatar Charity transactions which is what it  
2 called for, and we determined that there are no  
3 transactions at issue that they're seeking. They  
4 continue to focus -- the only reason that we're here is  
5 because they continue to focus on this confession. A  
6 confession that your Honor, as we pointed out in our  
7 papers, it's an excerpt. I don't have the full context.  
8 I don't know what language it was originally translated  
9 from. And if the Court will recall, we started this  
10 entire process with BONY, Bank of New York Mellon, not  
11 because we picked it, plaintiffs picked it.

12 THE COURT: Well, you didn't voluntarily tell  
13 them oops, you got it wrong and spend a lot of time  
14 wasting energy. So when you talk about the confession,  
15 are you talking about the plea or something different?

16 MS. FORNOS: Your Honor --

17 THE COURT: The confession that was discussed  
18 in the papers.

19 MS. FORNOS: The confession is what plaintiffs  
20 have appeared to have alleged in their papers which Judge  
21 Donnelly already considered.

22 THE COURT: Okay, but what about what the  
23 plaintiff is pointing at, plaintiffs are pointing at  
24 right now, this document -- I don't have the ECF  
25 numbering, so on the lower left-hand corner it's marked

## Proceedings

1 as 13 and it was originally page 1. And paragraph 5 on  
2 that first page, which if you read it, it says amended  
3 indictment, aforesaid defendants hereby indicted for  
4 committing the following offenses. First count, five is  
5 the paragraph that the plaintiff's attorney was reading.  
6 Right?

7 MS. FORNOS: Yes, your Honor. And our  
8 understanding is that that is the same reference, it's  
9 the same documents that were contained in the  
10 allegations. But Mr. Rocco can clarify if I'm wrong.  
11 But these are the same confessions that were alleged in  
12 the complaint and which Judge Donnelly considered. I  
13 don't have much more information than that, your Honor.  
14 Candidly, I don't have the file. I don't have the  
15 records. I don't know the context of this document. I  
16 have no idea where it ended up. I don't have any record  
17 with respect to this.

18 THE COURT: I guess I'm just -- I'm not  
19 following what your objection is in terms of the content  
20 of this document not being pretty relevant to the  
21 plaintiffs being allowed to thoroughly examine what was  
22 going on with the transfer of funds. Because if you look  
23 at page 13, you have paragraph 5. And then if you skip  
24 through, you go to -- it doesn't have a number on it.  
25 The heading of it is Israel Defense Forces, Emblem

## Proceedings

1 Advocate General, Judea Military Court. And you go below  
2 the heading hearing, I'm reading select parts of it, "We  
3 have reached a plea bargain under which the indictment  
4 will be amended. Defendant will confess to the amended  
5 indictment. The parties will argue on an agreed penalty.  
6 I confirm." And the defendant says, "The Court has read  
7 to me what is attributed to me in the amended indictment.  
8 I understand it and confess it." And then he's  
9 convicted.

10 MS. FORNOS: Your Honor, this is not a bank  
11 employee. I do not have any knowledge on this particular  
12 indictment and criminal proceeding plea negotiations. I  
13 can't even comment on how it happens in Israel.

14 Accordingly, your Honor, I understand that this  
15 is what they're putting before this Court but they also  
16 put this before Judge Donnelly and Judge Donnelly was  
17 very clear in her instruction in limiting discovery to  
18 ensure that there wasn't a fishing expedition. And we  
19 therefore object to plaintiff's request.

20 THE COURT: Let me just go back to the  
21 plaintiff so that I can thoroughly understand it.

22 MR. ROCCO: Well, two --

23 THE COURT: There was the confession and the  
24 plea.

25 MR. ROCCO: Two things, your Honor.

Proceedings

1 THE COURT: Just so I'm super clear, two  
2 different things, yes?

3 MR. ROCCO: Yeah, and they go together  
4 obviously. And let's be clear, your Honor, this  
5 pretending that they don't know if it's accurately  
6 translated and we can't possibly understand this, QC,  
7 those guys have the file. They submitted their versions  
8 of the earlier interrogatories. They know these  
9 documents are actual. No one's disputing that this  
10 happened. They've had months to translate it differently  
11 if they thought it didn't say what it says it says. So  
12 they've had these documents, QC, Qatar Charity, they have  
13 the file because they were able to present it to the  
14 Court misleadingly, so the 2015 statements to  
15 interrogators that were later retracted. And they used  
16 those as a basis to accuse us of misleading the Court.  
17 They've gotten the defense --

18 THE COURT: I'm not Judge Donnelly and we're  
19 not rearguing that.

20 MR. ROCCO: I know. They've got the defense  
21 file. So this says what it says, your Honor. And you  
22 know, what we heard from Ms. Fornos --

23 THE COURT: I'm sorry if it's pedantic, but  
24 you're saying two different kinds of documents, yes?

25 MR. ROCCO: Well, there's an indictment which

Proceedings

1 obviously has to be the imprimatur of the prosecutor --

2 THE COURT: Yes.

3 MR. ROCCO: -- and the evidence that backs that  
4 up. And then there's the admission to the indictment  
5 which is the confession and the hearing that your Honor  
6 just read from.

7 THE COURT: Okay. All right.

8 MR. ROCCO: Yes, correct.

9 MR. HILLEBRECHT: Your Honor, may I be heard?

10 THE COURT: No. I want to understand  
11 plaintiff's position. Go ahead.

12 MR. ROCCO: And so I think what we've heard,  
13 your Honor, which is helpful now because I couldn't get  
14 this answer in meet and confers, is they don't have the  
15 HSBC, or at least they didn't consult the HSBC account  
16 statements. They have something other than that. And  
17 it's in Qatar. And we have no idea what the retention  
18 policies are in Qatar. We have no discovery of that. We  
19 don't know whether they retained transactions for five  
20 years, ten years, 20 years, whether the database that  
21 she's talking about, how it was prepared or the like.

22 So this is just confirmatory discovery.  
23 They've acknowledged they don't have the HSBC account  
24 statements. We want to get those statements and to see  
25 if what Mr. Manasra said is right and money passed

## Proceedings

1 through New York. And there is no burden on them for  
2 that. It's a small burden on the bank because it's going  
3 to be, you know, pushing buttons, your Honor, to do  
4 searches for QC. And they're either going to have the  
5 SWIFT messages and the like, which are the back and forth  
6 that they use to identify transactions or they won't.  
7 And if they don't have any, then this is not a burden at  
8 all. They're going to tell us, you know, we did a quick  
9 search, there's not Qatar Charity stuff.

10 But we can get that subpoena out tomorrow, your  
11 Honor, and we'll get a response within, you know, a month  
12 or two, not years. And we would respectfully request  
13 that your Honor just extend the discovery period long  
14 enough for us to do that.

15 THE COURT: All right. Let me just go to MAR.  
16 Anything else you want to say about what this database is  
17 that you looked at basically responding to the  
18 plaintiff's position?

19 MS. FORNOS: Certainly. Your Honor, it's your  
20 standard banking transaction database.

21 THE COURT: Okay. I'm not an expert, so what  
22 does that mean? Sorry.

23 MS. FORNOS: It means that all records of  
24 transactions are digitally maintained. The law is you  
25 want to make reasonable efforts to ensure that you cover

## Proceedings

1 all of the transactions. And here, we have no reason to  
2 think that we're missing transactions. We have reviewed  
3 them. We are confident that there are no responsive  
4 documents to plaintiff's demands.

5 I think at this point, your Honor, the  
6 plaintiffs are just continuing to try to expand the scope  
7 of discovery over and over again and that's what has been  
8 their M.O. from the beginning.

9 THE COURT: All right. Why is it burdensome  
10 though? I mean you're not really responding. It would  
11 be the former correspondent bank that would be  
12 responding.

13 MS. FORNOS: Your Honor --

14 THE COURT: If it confirms your database, it  
15 confirms your database. You know, I'm putting aside the  
16 question of how this fits with what Judge Donnelly did  
17 and whether it requires a modification from the judge or  
18 whatever. Just let's talk about the substance of the  
19 process. What's the problem with doing what the  
20 plaintiffs want?

21 MS. FORNOS: Your Honor, the problem is that  
22 we're not in Rule 26. We're in jurisdictional discovery.  
23 That's really the problem. And anything that goes beyond  
24 what the district court has ordered is arguably a burden.

25 THE COURT: Okay. How many times am I going to

## Proceedings

1 tell you put aside that question? I will deal with what  
2 the issue is with Judge Donnelly's order and what should  
3 happen here. But I want to understand so that I can  
4 understand and Judge Donnelly can understand what are the  
5 challenges that are involved here? How burdensome is it?  
6 Why is it something that shouldn't happen on the merits  
7 of giving the plaintiffs a fair shot at understanding is  
8 there not a connection with New York? I mean --

9 MS. FORNOS: Your Honor, I can't answer for  
10 Hong Kong Shanghai Bank as to what is burdensome for  
11 them.

12 THE COURT: Exactly.

13 MS. FORNOS: But I do know that it is a non-  
14 party that is being burdened by a request when we have  
15 already responded to it.

16 THE COURT: All right. Well, they can come in  
17 and complain if they have a problem with it.

18 All right. Let's see, how about for you?

19 MR. HILLEBRECHT: Yeah, your Honor, just to  
20 respond to a couple of things that have been said. In  
21 terms of a fair shot, certainly our position is they've  
22 had a fair shot. The bank has represented they've done a  
23 diligent search and there simply are no U.S. dollar  
24 denominated transactions or transactions in any other  
25 denomination that pass through any of MAR's New York



## Proceedings

1 correspondent accounts and went to the Palestinian  
2 territories.

3 My client, Qatar Charity, has done a similar  
4 thorough search. It doesn't have the same kinds of  
5 record systems that the bank does. But we see nothing,  
6 we have nothing responsive indicating that those kinds of  
7 transactions went through New York and ended up in the  
8 Palestinian territories. So I think they have had a fair  
9 shot.

10 In terms of this confession, again, and I won't  
11 belabor the point, it had been considered by Judge  
12 Donnelly. The allegation that we have the file and we  
13 have some kind of great insight into what happened to the  
14 Israeli military court is simply false. We had some  
15 additional documents. Everything that we have at DLA  
16 Piper in connection with Qatar Charity was before Judge  
17 Donnelly and before your Honor. We quote what we have in  
18 the letter filed yesterday, and it's a bit of a muddle.  
19 There are two statements from 2015, one of them elicited  
20 by the prosecutors, which make no mention of New York,  
21 and quite to the contrary say explicitly the money went  
22 through Germany and was in euros.

23 I acknowledge what plaintiff has focused on  
24 that in the guilty plea later that detail has changed. I  
25 question, you know, he alluded to everybody here is a

## Proceedings

1 former federal prosecutor. I've never known a situation  
2 where somebody changes his story about which bank was  
3 used for the money transfer which seems to be completely  
4 irrelevant. So I think it's a very thin read, as we said  
5 in the letter, for them to hang their hat on. And also,  
6 you know, Judge Donnelly considered it.

7           Also, there's been a continual suggestion that  
8 the defendants have been engaged in some kind of  
9 gamesmanship. That's not the case. We've consistently  
10 said from the beginning that we question whether there  
11 were any funds transferred relevant here to the  
12 correspondent banks at all, period. And Judge Donnelly  
13 quotes that from us or at least ascribes that to us on  
14 page 27 of her decision.

15           So the idea that we knew all along that there  
16 was no BONY transfers is just false. The idea that we  
17 knew that going through the time and expense, and in the  
18 bank's case counsel traveling all the way to Doha to be  
19 sure that our answers and responses to the amended  
20 discovery demands were accurate and complete and then  
21 discovered there is no there there is not gamesmanship.  
22 I believe Mr. Kaplan said explicitly to your Honor when  
23 we were last here that as an officer of the Court he  
24 couldn't make that representation at that time though he  
25 expected it to be the case. Well, now we've gone through

Proceedings

1 the time, the trouble, the expense, and we determined it  
2 is the case. There are no such transactions.

3 So we think they've had a fair shot. We  
4 think -- I was about to mention Judge Donnelly's order  
5 but I won't.

6 THE COURT: I got it. I have it.

7 MR. HILLEBRECHT: I think we should be done  
8 here. I think that what we should be talking about is  
9 moving towards additional dispositive motions as  
10 somebody's order contemplated, your Honor.

11 THE COURT: All right. Back to MAR. So the  
12 focus of the discovery that was permitted was documentary  
13 but you're relying on work that was done with regard to  
14 reviewing this computer system. Would you be willing,  
15 I'm not saying that this is what I want, but to put in --  
16 is there somebody who could put in an affidavit about  
17 what that system is, what the record keeping is, that it  
18 has all of the information from the statements from the  
19 correspondent bank with whatever else is relevant?

20 MS. FORNOS: Yes, your Honor.

21 THE COURT: All right. Is there anything else  
22 anyone wants to say about this particular issue?

23 MR. ROCCO: No, your Honor. The only  
24 housekeeping matter is if your Honor needs to make a  
25 decision, which we appreciate, our time expires today I

## Proceedings

1 believe for the discovery period so that would have to be  
2 extended so we could deal with this issue. And as I say,  
3 we're prepared to, if your Honor gives us permission, to  
4 serve a subpoena tomorrow.

5 THE COURT: If you were to get a declaration or  
6 affidavit from a person with knowledge with regard to the  
7 record keeping that was discussed by counsel from the  
8 Doha trip, would that deal with your concerns or --

9 MR. ROCCO: Your Honor, I think we'd need a  
10 30(b)(6) where we actually get to probe what they say  
11 because we're just going to get the operation of  
12 something, you know, albeit under oath, but it's not  
13 going to answer the questions. And we know that they --

14 THE COURT: I mean how could you possibly know  
15 that? You just heard here what the counsel did.

16 MR. ROCCO: Correct. But we know they don't  
17 have the HSB account statements, your Honor, so that's  
18 why we want to get them.

19 THE COURT: But why do -- if what counsel is I  
20 believe saying which is that the information that's in  
21 this computer system includes all the information from  
22 HSB statements with regard to transactions, then other  
23 than the opening documents it appears to be inclusive.

24 MR. ROCCO: I guess we'd have to see what that  
25 says obviously, your Honor. I'm not a seer, so I can't

Proceedings

1 tell you.

2 THE COURT: All right. Are there, other than  
3 this issue, any other discovery issues outstanding on the  
4 jurisdictional inquiry?

5 MR. ROCCO: There are not as far as I'm aware,  
6 your Honor.

7 THE COURT: No? All right. Anybody have any  
8 settlement discussions? Anyone interested in that? You  
9 know, I'm relentless.

10 MR. ROCCO: Thanks for asking.

11 THE COURT: Deafening silence. All right.  
12 We'll try to deal with this quickly. Thank you.

13 MR. ROCCO: Thank you very much, your Honor.

14 THE COURT: Take care. Bye.

15 MS. FORNOS: Thank you, your Honor.

16 MR. HILLEBRECHT: Thank you.

17 THE COURT: All right.

18 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 9th day of August, 2023.

  
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